

ELISSA M. ROBERTS, Individually and on	)	
Behalf of All Others Similarly Situated,	)	Case Number: 4:19-cv-02935-HSG
	)	
Plaintiff,	)	STIPULATED ORDER RE: DISCOVERY
	)	OF ELECTRONICALLY STORED
v.	)	INFORMATION
	)	
BLOOM ENERGY CORPORATION, et al.,	)	
	)	
	)	
Defendants.	)	
	)	
	)	

## 1. PURPOSE

## 2. DEFINITIONS

1

1 or facsimile and every other means of recording upon any tangible thing, any form of  
2 communication or representation, including letters, words, pictures, sounds or symbols or  
3 combinations thereof, and any record created thereby, regardless of the manner in which the  
4 record has been stored, and also specifically includes Electronically Stored Information and Hard-  
5 Copy Documents.

6 2.2. “Electronically stored information” or “ESI” means any Document or Documents  
7 stored or transmitted in electronic form.

8 2.3. “Hard-Copy Document” means any Document existing in paper form at the time  
9 of collection.

10 2.4. “Hash Value” is a unique alphanumeric identifier that can be assigned to a file,  
11 a group of files or a portion of a file, based on a standard mathematical algorithm applied to the  
12 characteristics of the text contained within the file or files.

13 2.5. “Metadata” means data created as a function of the application software used to  
14 create the document or file. To the extent they are available and able to be captured at the time of  
15 collection, the metadata values that are to be extracted and produced in the metadata load files  
16 (.DAT file using concordance standard delimiters) are listed in “Addendum A” attached hereto.

17 2.6. “Native Format” means and refers to the format of ESI in which it was generated  
18 and/or as used by the Producing Party in the usual course of its business and in its regularly  
19 conducted activities. For example, the Native Format of an Excel workbook is a .xls or .xlsx file.

20 2.7. “Load Files” means electronic files provided with a production set of Documents  
21 and images used to load that production set into a Requesting Party’s Document review platform.

22 2.8. “Optical Character Recognition” or “OCR” means the process of recognizing, and  
23 creating a file containing, visible text within an image.

24 2.9. “Searchable Text” means the text extracted or generated using OCR from any  
25 Document that allows the Document to be electronically searched.

### 26 **3. COOPERATION**

27 The parties are aware of the importance the Court places on cooperation and commit to  
28 cooperate in good faith throughout the matter consistent with this Court’s Guidelines for the

1 Discovery of ESI.

2 **4. LIAISON**

3 The parties have identified liaisons to each other who are and will be knowledgeable  
4 about and responsible for discussing their respective ESI, as follows:

5 For Plaintiff: Adam M. Apton, Esq., Levi & Korsinsky, LLP

6 For Defendants: Matthew J. Dolan, Esq., Sidley Austin LLP and Robert H. O’Leary,  
7 Esq., Morgan, Lewis & Bockius LLP

8 Each e-discovery liaison will be, or have access to those who are, knowledgeable about  
9 the technical aspects of e-discovery, including the location, nature, accessibility, format,  
10 collection, search methodologies, and production of ESI in this matter. The parties will rely on  
11 the liaisons, as needed, to confer about ESI and to help resolve disputes without court  
12 intervention.

13 **5. PRESERVATION**

14 The parties have discussed their preservation obligations and needs and agree that  
15 preservation of potentially relevant ESI will be reasonable and proportionate. To reduce the costs  
16 and burdens of preservation and to ensure proper ESI is preserved, the parties agree that:

17 a) Only ESI created or received between March 30, 2017, and December 31,  
18 2020 needs to be preserved, unless otherwise agreed in the ordinary course of discovery;

19 b) The parties will meet and confer on the types of ESI they believe should  
20 be preserved and the custodians, or general job titles or descriptions of custodians, for  
21 whom they believe ESI should be preserved, e.g., “HR head,” “scientist,” and “marketing  
22 manager.” The parties shall add or remove custodians as reasonably necessary. If the  
23 Parties fail to reach agreement, any Party may, but is not required to, bring the dispute to  
24 the Court for resolution;

25 c) The parties will meet and confer on the number of custodians per party  
26 for whom ESI will be preserved. If the Parties fail to reach agreement, any Party may,  
27  
28

1 but is not required to, bring the dispute to the Court for resolution; and

2 d) Defendants believe that the circumstances of this case do not warrant the  
3 preservation, collection, review, or production of ESI that is not reasonably accessible  
4 because they anticipate that enough relevant information can be yielded from reasonably  
5 accessible sources and, as necessary and appropriate, supplemented with deposition  
6 discovery.

7 e) The Parties agree to meet and confer regarding any disagreements. If the  
8 Parties fail to reach agreement, any Party may, but is not required to, bring the dispute to  
9 the Court for resolution.

10 **6. SEARCH**

11 6.1 The parties agree that in responding to an initial Fed. R. Civ. P. 34 request, or  
12 earlier if appropriate, they will meet and confer about methods to search ESI in order to identify  
13 ESI that is subject to production in discovery and filter out ESI that is not subject to discovery.

14 6.2 The Producing Party may apply electronic searches in order to identify potentially  
15 responsive ESI. The Parties agree to meet and confer on a search protocol for such searches,  
16 comprising of (a) the custodians and/or sources of ESI to be searched; (b) the search terms to be  
17 applied against those custodians and/or sources; (c) the date range to be applied against those  
18 custodians and/or sources; and (d) any other search criteria or methods to be used to identify  
19 potentially responsive ESI (the "Search Protocol"). If the Parties fail to reach agreement as to  
20 the Search Protocol, either Party may, but is not required to, bring the dispute to the Court for  
21 resolution. In the absence of an agreement or court order regarding a Search Protocol, the  
22 Producing Party may apply a Search Protocol of its choosing, without prejudice to the  
23 Requesting Party's ability to seek later relief from the Court regarding the adequacy of the Search  
24 Protocol.

25 6.3 The fact that the Parties agree to a Search Protocol shall not preclude a Producing  
26 Party from reviewing potentially responsive ESI that is returned by the Search Protocol in order  
27 to make final determinations as to the responsiveness of the ESI and the privilege and other  
28

1 protections applicable to the ESI.

2         6.4     Where reasonable, including but not limited to if specific sources of potential ESI  
3 cannot be searched using the Search Protocol due to technical limitations, a Producing Party may  
4 employ means other than the Search Protocol in order to identify responsive Documents or ESI.  
5 The Parties agree to meet and confer regarding any disagreements. If the Parties fail to reach  
6 agreement, any Party may, but is not required to, bring the dispute to the Court for resolution.

## 7         **7.         PRODUCTION FORMATS**

8         7.1     ESI is to be produced in 300 DPI Group IV Grayscale Tagged Image File Format  
9 (.TIFF or .TIF) files. TIFF files shall be produced in single-page format along with image load  
10 files (.OPT file and .LFP file). If TIFF files are unavailable or unable to be produced, documents  
11 may be produced in a similar graphic file format (*e.g.*, .JPG). All documents are to be provided  
12 with per document searchable text (.TXT) files, and such text files shall contain the full text  
13 extraction. In the event a document is redacted or scanned into TIFF format, the text file should  
14 contain that document's OCR text. These text files and image load files should indicate page  
15 breaks, to the extent possible. If particular documents warrant a different format, the parties will  
16 cooperate to arrange for the mutually acceptable production of such documents. The parties agree  
17 not to degrade the searchability of documents as part of the document production process.

18         7.2     During the process of converting ESI from the electronic format of the application  
19 in which the ESI is normally created, viewed and/or modified to TIFF, metadata values should be  
20 extracted and produced in a load file.

21         7.3     Unless otherwise stated herein, documents in families shall be produced and  
22 Bates-stamped in sequence with the Absolute Parent first in sequence, followed by any and all  
23 attachments. Absolute Parent shall be defined as the document that is the source for all other  
24 documents in a document family, regardless of whether attachments to the Absolute Parent are  
25 also parent documents with attachments. When producing responsive attachments, the parent  
26 email will be produced, regardless of responsiveness unless otherwise protected from disclosure.

27         7.4     The parties may deduplicate document families found to be MD5 Hash duplicates  
28 across or within custodians. If deduplication is done across custodians, then that party shall

1 include all custodians of a record (including custodians of deduplicated records) in the Custodian  
2 field delimited by semicolons. Moreover, (a) de-duplication shall be performed only at the  
3 document family level so that attachments are not de-duplicated against identical stand-alone  
4 versions of such documents and vice versa, although each family member shall be hashed  
5 separately for purposes of populating the MD5 Hash field; (b) attachments to emails, instant  
6 messages, or other documents shall not be disassociated from the parent email, instant Messages,  
7 or document even if they are exact duplicates of another Document in the production, except that  
8 non-substantive embedded objects such as email footers, logos, etc. need not be produced. A party  
9 electing to deduplicate exact duplicates across custodians shall take reasonable steps to ensure  
10 that at least one copy of a responsive exact duplicate that is located in the files of one or more  
11 custodians agreed to by the parties (or ordered by the Court) is produced.

12 7.5 Any Party may request the production of ESI in native format where the  
13 production in native format is reasonably necessary to the ESI's comprehension or use. For ESI  
14 produced in native format, a Bates-stamped placeholder TIFF bearing the legend "This Document  
15 has been produced in Native Format" shall also be produced in the same manner as other TIFFs.

16 7.6 Documents shall be exchanged on DVD-ROMs, CD-ROMs, USB drives, portable  
17 hard drives or through secure file transfer protocols (*e.g.*, FTP) or similar secure electronic  
18 transmission. A production by secure file transfer shall be considered complete when made  
19 available to the Receiving Party.

20 7.7 To maximize the security of information in transit, any media on which  
21 documents are produced shall be encrypted by the Producing Party. In such cases, the  
22 Producing Party shall transmit the encryption key or password to the Requesting Party, under  
23 separate cover, contemporaneously with the encrypted media.

## 24 **8. DOCUMENTS PROTECTED FROM DISCOVERY**

25 Communications involving trial counsel that post-date May 28, 2019, the date of the filing  
26 of the original complaint in this matter, are presumed privileged and need not be logged in any  
27 privilege log.  
28

1       **9.       MODIFICATION**

2               This Stipulated Order may be modified by a Stipulated Order of the parties or by the  
3 Court for good cause shown.

4               **IT IS SO STIPULATED**, through Counsel of Record.

5  
6 DATED: June 27, 2022

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**ADDENDUM A**

Field	Definition	Doc Type
CUSTODIAN	Name of person from where Documents/files were collected or, in the case of non-human sources, a short description of that source ( <i>e.g.</i> , “Shared Drive”).	All
ALLCUSTODIANS	The Custodian value of the Document as well as the Custodian value for all copies of the Document that were removed as a result of de-duplication.	All
BEGBATES	Beginning Bates Number (production number)	All
ENDBATES	Ending Bates Number (production number)	All
BEGATTACH	First Bates number of family range ( <i>i.e.</i> , Bates number of the first page of the parent Document)	All
ENDATTACH	Last Bates number of family range ( <i>i.e.</i> , Bates number of the last page of the last attachment or, if no attachments, the Document itself)	All
PAGE COUNT	Number of pages in the Document	All
APPLICATION	Commonly associated application for the specified file type.	All
NATIVE FILE LINK	The file path for Documents provided in Native Format	All
TEXTPATH	File path for OCR or Extracted Text files	All

FOLDER	Folder location of the e-mail within the PST/OST	E-mail
FROM	Sender	E-mail
TO	Recipient	E-mail
CC	Additional Recipients	E-mail
BCC	Blind Additional Recipients	E-mail
SUBJECT	Subject line of e-mail	E-mail
DATESENT	Date Sent (mm/dd/yyyy hh:mm:ss AM)	E-mail
DATERCVD	Date Received (mm/dd/yyyy hh:mm:ss AM)	E-mail
HASHVALUE	Hash value ( <i>e.g.</i> , MD5 or SHA-1)	All
FILENAME	Original file name at the point of collection	E-Document
TITLE	Internal Document property	E-Document
AUTHOR	Creator of a Document	E-Document
DATE CREATED	Creation Date (mm/dd/yyyy hh:mm:ss AM)	E-Document
DOCUMENT TYPE	Descriptor for the type of Document	All
PRODVOL	Name of media that data was produced on.	All
CONFIDENTIALITY	Confidentiality level if assigned pursuant to any applicable Protective Order or stipulation.	All
TIMEZONE	Time zone of data used during processing of data.	All